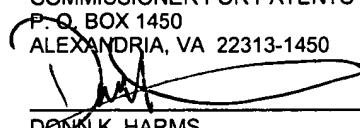
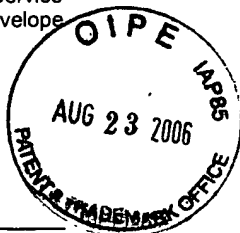


CERTIFICATE OF MAILING

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DONN K. HARMS



AF
TW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Fan et al. EXAMINER: Walker, Keith D.

Serial Number 10/656,677

Group Art Unit: 1745

Filing Date: 09/04/03

For: Positive Electrode Material and Method

MAIL STOP AMENDMENT-**AF**
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Sir:

AMENDMENT AFTER FINAL

This amendment after final is hereby being **submitted**
less than two months from the mailing of the Examiner Final
Rejection (Monday after Sunday Aug 13).

Sir:

In response to the Office Action mailed on **June 13, 2006**,
please amend the above-identified application as follows:

INITIAL STATEMENT

The Examiner has stated that the limitation in claim 1, "whereby said active particles can be processed into said battery electrode using aqueous solutions, was not given weight in the examination as it does not further limit the calmed product.

In *Hoffer v. Microsoft Corp.*, 405 F.3d 1326, 1329, 74 USPQ2d 1481, 1483 (Fed. Cir. 2005), the Court held that "*when a 'whereby' clause states a condition that is material to patentability, it cannot be ignored in order to change the substance of the invention.*" Id.

In other words, it is an element to be considered.

Applicant throughout the specification has noted the material benefit of the claimed invention being processible from particles to a battery electrode using aqueous solutions. All the cited art either has hydrophillic exteriors or gaps in coatings on the exteriors which provide communication to hydrophillic materials, or coatings with hydrophillic materials exposed. Processing with an aqueous solution will cause gases and potential explosions and long term storage of the cited art requires separation from humidity. Consequently, none of the cited art is processable using an aqueous solution making the cited element material to the patentability of applicant's device which yields benefits in production of electrodes, and storage of electrodes formed of applicants particles. (See specification page 2 line 18 to page 4 line 14). Since the element so stated yields such stated benefits, and the cited art lacks this ability, the stated element that applicant's particles are processable to electrodes in an aqueous solution, is material, and an element not possessed by the prior art, and should have been given patentable weight.